

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	Jacob et al.)
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For:	Method and Apparatus for)
	Delivering Services)
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Serial No.:	10/749,711)
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Filed:	December 31, 2003)
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Examiner:	Nguyen, K.)
)
Art Unit:	2617)

Pre-Appeal Brief Request for Review

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Applicants hereby request review of the final rejection in the above-identified application. No amendments are being filed with this request. The present request is being filed in conjunction with a notice of appeal. The review is being requested for the reasons stated below, which frames the issue to be considered as part of the pre-appeal review process.

The Examiner continues to reject claims 1-24, and more specifically, the Examiner continues to reject claims 24 under 35 U.S.C. §103(a), as being anticipated by Milman, US Patent Application Publication No. 2004/0014479; rejects claims 1-12, under 35 USC §103(a) as being unpatentable over Milman, ‘479, in view of Himmelstein, US Patent Application Publication No. 2004/0162064; and rejects claims 13-23, under 35 USC §103(a) as being unpatentable over Chaskar, US Patent Application Publication No. 2004/0224702, in view of Milman, ‘479 and Himmelstein, ‘064. However contrary to the Examiner’s assertions, with respect to claims 1-23, and the references relied upon in support of their rejection, there is no motivation to combine the reference, and even if one were to combine the references as suggested by the Examiner, the combination of references fail to make known or obvious each and every feature of the claims. With respect to claim 24, the cited reference similarly fails to

make known each and every feature of the claims. Consequently, the applicants would contend that the same has not been properly shown to be anticipated and/or made obvious, and would respectfully request that the Examiner reconsider the rejections of the claims and that the Examiner would withdraw the rejections.

In rejecting claim 24, the Examiner has relied upon Milman, '479, but Milman fails to teach or suggest any direct communication between an apparatus associated with a user and the service provider dispatched to the user, where all transactional interaction associated with the service provider is entered directly into the technician hand held communication device 26 or the communication device in the technician's vehicle. This is contrary to claim 24, which as presently pending, involves a communication between the apparatus associated with a user (of the service) and a service provider dispatched to the user responsive to the service request. Interestingly, in responding to applicant's remarks, the Examiner misquotes the distinction, and then fails to show how the reference makes known the feature identified by the applicant, when considered without misquoting the same. Namely, the claims provides for directly communicating service transaction data by the apparatus associated with the user and the service provider dispatched to the user. The Examiner continues to rely upon a teaching of an interaction between the dispatched service provider and an apparatus associated with the service provider (as opposed to an apparatus associated with the user of the service). Consequently, with respect to at least claim 24, the reference relied upon by the Examiner fails to make known each and every feature of the claim.

In rejecting independent claims 1 and 13, and indirectly the claims which depend therefrom, the Examiner has relied upon a combination of references for which the Examiner has failed to provide a proper motivation to combine, and even if the Examiner were to attempt to combine the references as suggested, the references still would not make known each and every feature of the claims.

As previously noted, the Examiner has correctly identified that Milman, '479, minimally fails to make known establishing a second communication connection, the second communication connection being between the user communication device and the service provider. However contrary to the Examiner's assertion Himmelstein, '064, fails to account for the noted deficiency. Alternatively, Himmelstein, '064, is directed to a form of mobile to mobile communication, but neither of the mobiles in Himmelstein is identified as being a service

provider that is responding to a request for service from the other mobile unit. Furthermore Himmelstein, '064, fails to identify the communication in the form of a mobile to mobile communication as providing for the completion of a service transaction upon the rendering of the service by the service provider. Still further, Milman, '479, contrary to the Examiner's assertion fails to make known completing a service transaction via a second communication connection, established between the user communication device and the service provider. As a result, the Examiner has attempted to combine disparate teachings in a piece meal fashion without regard to contextual consistency and/or without providing a teaching or motivation to combine the same.

In responding to the applicant's assertion of a lack of motivation to combine, the Examiner after the fact suggests that an ability to communicate without requiring a base station would be beneficial as an enhancement, but this is not the same as establishing both a second communication connection, in addition to a first communication connection. Hindsight reasoning and analysis without any indication of recognition of the potential modification and associated benefits being alleged and used as motivation, which does not come from the relied upon references or any other alleged source of a prior teaching, and is not taught as being desirable in a context consistent with the claims is simply improper. In at least the present circumstances, the contextual inconsistency and/or silence relative to the claimed context has in effect precluded the possibility that each and every feature associated with the claims could be taught or suggested, in so far as the completion of the service transaction is based upon a claimed context in which a service is being provided.

More specifically, in claim 1 of the present application both a first communication connection and a second communication connection is noted, where each communication connection has a different set of related features. Here the Examiner has failed to show a motivation to combine in a manner which is contextually consistent, so as to provide for the second communication connection being between the user communication device and the service provider, where the service transaction is completed via the second communication connection upon rendering of the service by the service provider (claim 1), which is separate from the additional first communication connection being used as part of communicating the request for the service.

A similar problem arises in the attempted rejection of claim 13, where the Examiner has further grouped a still further reference, namely Chaskar, '702, which has been treated as the

principal reference, which is largely relied upon to provide the specific teaching relative to a processor, a user interface and a transceiver. Milman, '479, is then relied upon relative to an interaction between the user device and a service provider agent (first communication connection), and Himmelstein, '064, is relied upon relative to an interaction between the user device and dispatched service provider, in a manner which is consistent with the Examiner's attempt to similarly apply the two references to claim 1. However, the deficiencies noted above with respect to the attempted rejection of claim 1, are similarly applicable to claim 13, even after the teachings of the further reference Chaskar, '702, are accounted for. Consequently, for the same reasons noted above with respect to claim 1, Milman, '479, in view of Himmelstein, '064, fail to make known or obvious the respective corresponding features relative to claim 13.

As a result, in absence of an appropriate motivation to combine, which accounts for a combination in a context, which is consistent with the claims, then the features which in the claims are separately associated with each of the first and second communication connections can not be said to be taught or suggested by the combination of references, as the references contain no teaching or suggestion as to how to distribute the features amongst the multiple communication connections, and/or whether to support multiple communication connections for the same or similar features. Correspondingly, contrary to the assertions of the Examiner, there is no motivation to combine the references in a manner, which could reasonably be said to make known or obvious each and every feature of the claims. The above noted distinctions relative to claims 1 and 13 are similarly applicable to claims 2-12 and 14-23, which depend therefrom.

In view of the above remarks, the applicants would respectfully request that the Examiner's final rejection of the claims be withdrawn, as failing to make known or obvious each and every feature of the claims.

Respectfully submitted,

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